

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE
REGULATORY AUTH.

In the Matter of
BellSouth Telecommunications, Inc.,

Complainant,

v.

Global Crossing
Telecommunications, Inc.,

Defendant.

*01 DEC 10 AM 11 32

OFFICE OF THE
EXECUTIVE SECRETARY
Docket No. 01-00913

**GLOBAL CROSSING TELECOMMUNICATIONS, INC.'S REPLY TO BELL SOUTH
TELECOMMUNICATIONS, INC.'S RESPONSE TO GLOBAL CROSSING'S MOTION
TO DISMISS BELL SOUTH'S COMPLAINT AND REQUEST TO DISMISS
BELL SOUTH'S COMPLAINT OR, IN THE ALTERNATIVE, TO
HOLD IN ABEYANCE BELL SOUTH'S COMPLAINT**

Global Crossing Telecommunications, Inc. ("Global Crossing") hereby submits to the Hearing Officer its reply to the response of BellSouth Telecommunications, Inc. ("BellSouth") filed before the Tennessee Regulatory Authority ("T.R.A.") in this docket on December 6, 2001. Global Crossing further renews its motion for the T.R.A. to dismiss BellSouth's complaint in its entirety or, in the alternative, to hold in abeyance this proceeding pending the outcome of substantially identical litigation previously filed in the United States District Court for the Northern District of Georgia.

I. **ARGUMENT**

A. **At a Minimum, the T.R.A. Should Stay Proceeding Pending Final Determination of the United States District Court Proceeding**

In this reply, Global Crossing renews its alternative request that if the case is not dismissed in its entirety, which Global Crossing believes it should be, then the T.R.A. should hold in abeyance this proceeding while the same dispute is pending before the United States District Court for the Northern District of Georgia. *See Global Crossing Telecommunications, Inc. v. BellSouth Telecommunications, Inc.* Civil Action No. 1:01-CV-2706. It would be illogical to allow two (indeed, nine) separate proceedings on substantially the *same* issues to continue. Not only does this create the possibility for conflicting outcomes, but it also wastes precious administrative resources. In both proceedings, the parties will, in all likelihood, use the same witnesses, present the same legal arguments, rely on the same exhibits and provide the same evidence to both the T.R.A., seven other state Commissions and the United States District Court. Staying this case and allowing the federal case to proceed first ensures that a consistent analysis is applied to the facts concerning the federal issue of interstate traffic, which then, in turn, may be consistently applied to any remaining state proceedings. If it is determined that some state specific issues exist, the T.R.A. may address those state-specific issues upon completion of the federal court proceeding.

In addition, even BellSouth has conceded that it “does not object to staying further proceedings in this matter until [its motion to dismiss is] resolved by the federal court.” *See* BellSouth Response at 18-19. However, the T.R.A. should not merely “temporarily” stay this proceeding until its motion is heard in the federal case as BellSouth has requested. Rather the T.R.A. should stay this entire proceeding until the conclusion of the federal case. It would be illogical for the T.R.A. to stay this proceeding for only a short while until the United States

District Court decides just one issue presented to it. Such action would not eliminate the duplication created by having two substantially similar cases proceed simultaneously. Staying this proceeding pending the final decision of the United States District Court is the logical way not only to preserve precious administrative resources but also to eliminate the duplication caused by having multiple cases with the same issues being litigated before multiple forums.

Recently, the Chair of the North Carolina Utilities Commission ("NCUC"), in the companion suit filed by BellSouth in North Carolina, stayed the proceeding pending the outcome of BellSouth's Motion to Dismiss in the federal case. *See Order Holding Docket in Abeyance Temporarily*, Docket No. P-244, Sub. 20 (dated Dec. 7, 2001), attached hereto as **Exhibit A**. In addition to holding the proceeding in abeyance, the NCUC acknowledged that if the "Motion to Dismiss not be granted, then [Global Crossing] may request that the Stay be extended." Based on this decision and the other factors addressed above, the T.R.A. should hold in abeyance this proceeding.

B. BellSouth's Reliance on LDDS is Inappropriate

BellSouth places heavy reliance upon the decision of the Federal Communications Commission ("FCC") in a matter brought by another IXC, LDDS. *See In the Matter of LDDS Communications, Inc., v. United Telephone of Florida*, Memorandum Opinion and Order, 15 FCC Rcd 4950, (rel. Mar. 8, 2000) ("*LDDS*"). LDDS cannot be distorted in the manner BellSouth wishes. At issue in *LDDS* was the propriety of applying a backbilling provision in an intrastate tariff to traffic that *had already been determined to be intrastate in nature*. There, the LEC (United Telephone) performed an audit of the PIUs reported by LDDS, pursuant to the terms of its federal tariff. Upon completion of the audit and the identification of the jurisdiction of traffic as either interstate or intrastate United Telephone *then* backbilled LDDS for the underpayment of intrastate usage. LDDS disputed the retroactive billing, challenging that it

violated United Telephone's federal tariff. *LDDS* at ¶ 9. It did not, however, challenge the audit results themselves. *Id.* In its decision, the FCC held that the PIU process "identifies the jurisdiction to which an IXC's traffic is assigned." *Id.* at ¶ 11. "*Once that assignment has been accomplished,*" the Commission ruled, the state tariff, including its backbilling provisions, may govern intrastate traffic. *Id.* (emphasis supplied). This conclusion is not surprising.

However, it is completely irrelevant in this context. Here, BellSouth assumes that, merely because it brought this proceeding before the T.R.A., the case necessarily involves the issue of the correct reporting of intrastate minutes of use. What BellSouth ignores is that, in this case, unlike *LDDS*, the line between intrastate usage and interstate usage has yet to be drawn. BellSouth did not request an audit of any of the over 28 PIU reports made by Global Crossing and it summarily rejected the independent audit Global Crossing commissioned. There has been no determination yet (by *any* judicial or administrative entity with jurisdiction) of the jurisdictional classification of the traffic reported. Without this, the "fence" between federal and state spheres cannot be located; therefore state jurisdiction is lacking for the unallocated traffic and the issue remains a federal issue. See *LDDS* at 2 (quoting *Smith v. Illinois Bell. Tel. Co.*, 282 U.S. 133, 148-149 (1930) (requiring "separation of the intrastate and interstate property, revenues and expenses" of the LEC); see also *Hawaiian Tel. Co. v. Pub. Utils. Comm'n of Haw.*, 827 F.2d 1264, 1275-1276 (1987) (when the FCC has prescribed an applicable separation methodology, states are not free to ignore it). For these reasons alone, BellSouth's reliance on the *LDDS* is inappropriate under the facts of the current dispute.

C. **A Similar Proceeding Concerning PIUs and Traffic Jurisdiction has been Stayed Pending Resolution of the Federal Case.**

In its response, BellSouth cites to several authorities for the proposition that PIU reporting raises issues of intrastate usage and, therefore, the appropriate forum is the state

commission only. However, in a recent case, Chairman of the Florida Public Service Commission ("PSC"), acting as hearing examiner, stayed a similar case (on PIUs) pending the resolution of the issue of the appropriate methodology for classifying traffic as interstate or intrastate before the FCC. *See Order Granting Motion to Stay, In re: Complaint by BellSouth Telecommunications, Inc. against Thrifty Call, Inc. regarding practices in the reporting of percentage interstate usage for compensation for jurisdictional access services*, Order No. PSC-01-2309-PCO-TP (issued Nov. 21, 2001) ("*Order Granting Thrifty Call's Motion to Stay*"). In the Florida case, the Hearing Examiner concluded that because BellSouth's own Florida Access Services Tariff (like the tariff in Tennessee) uses the number of *interstate* minutes reported as the basis of calculating the amount of intrastate usage, issues of PIU reporting inherently pose federal issues which must first be decided by the appropriate federal body. *See Order Granting Thrifty Call's Motion to Stay*, at 6-7; *See also* § E2.3.14 (A) and (B) BellSouth Tennessee Access Services Tariff. A copy of this Order is attached hereto as ***Exhibit B***.

As is the case in Tennessee, BellSouth's own Access Services Tariff the T.R.A. to consider the amount of *interstate* usage before determining intrastate usage. BellSouth admits to this process in its response. *See BellSouth Response* at 3-4. In essence, unless and until interstate usage is first determined, it is impossible to calculate the amount of intrastate usage. An independent determination of the amount of interstate usage by two different bodies leads to the risk that the sum of interstate and intrastate usage could exceed total usage. It was for precisely this reason that the Joint Board recommended and the Commission adopted the procedures that it did for allocating traffic between the interstate and intrastate jurisdictions. As Global Crossing demonstrated in its motion to dismiss, that determination is committed to the appropriate federal authorities. *See Global Crossing Motion to Dismiss* at 8-11.

Even if state issues may need to be determined (which, for purposes of this argument, Global Crossing assumes, but does not concede), the determination of the amount of interstate usage must, historically and pursuant to the tariffs, proceed first, before any state issues may be determined. Therefore, at a minimum, the T.R.A. should follow the lead of the Florida PSC and stay the proceeding pending the outcome in the federal case.

D. This Commission Should Dismiss this Proceeding in its Entirety

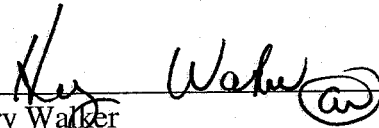
Indeed, based on the rationale of the Florida PSC that issues of PIU reporting inherently raise federal issues and, therefore, the federal interstate usage issue must be resolved first at the federal level, the T.R.A. should dismiss BellSouth's complaint in its entirety. The issues in this proceeding are federal issues: the classification of traffic and the audit procedures under BellSouth's federal tariff. The T.R.A. does not have jurisdiction over these federal issues. These issues must be decided at the federal level and not at the state level. Global Crossing should not be required to expend time and money to defend a suit that was brought in an improper forum. The T.R.A. should dismiss this complaint in its entirety.

II. CONCLUSION

Based on the foregoing and its motion to dismiss, Global Crossing requests that the T.R.A. grant Global Crossing's motion to dismiss BellSouth's complaint in its entirety. In the alternative, the T.R.A. should hold in abeyance BellSouth's complaint and this proceeding until after the conclusion of the pending United States District Court proceeding.

Respectfully submitted,

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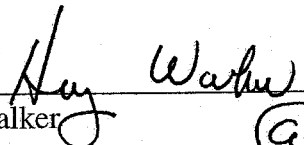

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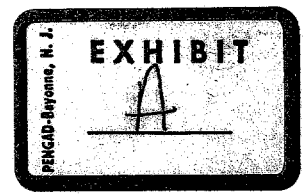
Dated: December 10, 2001

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via fax or hand delivery and U.S. mail to the following on this the 10th day of December, 2001.

Guy Hicks, Esq.
Joelle Phillips, Esq.
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333 Commerce St., Suite 2101
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Henry Walker 



STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. P-244, SUB 20

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
BellSouth Telecommunications, Inc.,)	
Complainant)	
v.)	ORDER HOLDING DOCKET IN
)	ABEYANCE TEMPORARILY
Global Crossing Telecommunications, Inc.,)	
Respondent)	

BY THE CHAIR: On October 22, 2001, BellSouth Telecommunications, Inc. (BellSouth) filed a Complaint against Global Crossing Telecommunications, Inc. (GCTI) stating that GCTI had misreported its terminating percentage of interstate use (TPIU) and that, consequently, BellSouth had underbilled GCTI \$811, 937.00 for the period between 1994 and 2000 with respect to terminating access service provided in North Carolina. Late payment charges increase the total amount due to \$944,566.00. BellSouth noted that, because the rates for interstate usage are typically lower than the rates for intrastate usage, an interexchange carrier can dramatically reduce its cost of doing business by overstating its PIU o BellSouth.

On November 13, 2001, GCTI filed an Answer to BellSouth's Complaint. GCTI raised various affirmative defenses, including that the claims were barred by the applicable statute of limitation and by BellSouth's tariffs; that BellSouth had failed to follow applicable audit procedures in relevant tariffs; that BellSouth is barred by the doctrine of laches from asserting any claim for retroactive recovery; that BellSouth is estopped by its own conduct from claiming that GCTI owes any additional monies; and that the Commission lacks subject matter jurisdiction.

On November 21, 2001, GCTI filed a Motion to Dismiss or, in the Alternative, to Hold in Abeyance. GCTI reiterated that BellSouth had ignored long-established dispute resolution procedures, had impermissibly sought to extend time limitations for bringing its complaint, and had sought to bypass federal jurisdiction. Specifically, GCTI argued that the matter should be held in abeyance pending resolution of an earlier-filed action for declaratory judgment and injunctive relief brought by GCTI in the United States District Court for the Northern District of Georgia, which raises the very same issues that BellSouth raises in is complaint. See, Global Crossing Telecommunications, Inc. v. BellSouth Telecommunications, Inc., Civil Action No. 1:01-CV-2706 (filed October 11, 2001). GCTI noted that BellSouth has initiated Complaint proceedings of a

similar nature in at least seven other state commissions. GCTI also argued that BellSouth had "subverted" the audit procedures in its tariff and had ignored an independent audit demonstrating GCTI's compliance with its PIU reporting obligations. By failing to request an audit, BellSouth has waived any tariff claims it might have.

On November 30, 2001, BellSouth filed a Reply to Global Crossing's Answer in which BellSouth checked the form to state that the GCTI's Answer was unsatisfactory and to request a hearing. Later, on December 5, 2001, BellSouth filed a more comprehensive reply in which it argued that the instant dispute is governed by BellSouth intrastate tariffs and the FCC's EES methodology order does not apply to Global Crossing because it does not utilize Feature Group A and B access services but only Feature Group D. BellSouth further argued that it has not violated its intrastate tariff, and it does not have to conduct an audit before filing its claim. BellSouth's claims are not time-barred, and the Commission has full authority to resolve this complaint. As to deferral of this matter, BellSouth states it does not object to staying further proceeding until its motion to dismiss in the Georgia federal court is resolved but opposes any dismissal of the present matter or any stay until the final outcome of the federal case.

WHEREUPON, the Chair reaches the following

CONCLUSIONS

After careful consideration, the Chair concludes that good cause exists to hold this matter in abeyance pending resolution of BellSouth's Motion to Dismiss in the earlier-filed action for declaratory judgement and injunctive relief brought by GCTI in the United States District Court for the Northern District of Georgia in Civil Action No. 1:01-CV-2706. Should the Motion to Dismiss not be granted, then GCTI may request that the Stay be extended and shall set out the reasons therefor. BellSouth may then respond to GCTI's filing. Should the Motion to Dismiss be granted, then, upon being so advised, the Chair will proceed to set this matter for hearing.

IT IS, THEREFORE, SO ORDERED.

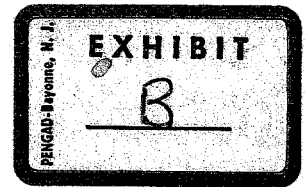
ISSUED BY ORDER OF THE COMMISSION.

This the 7th day of December, 2001.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by BellSouth
Telecommunications, Inc.
against Thrifty Call, Inc.
regarding practices in the
reporting of percent interstate
usage for compensation for
jurisdictional access services.

DOCKET NO. 000475-TP
ORDER NO. PSC-01-2309-PCO-TP
ISSUED: November 21, 2001

ORDER GRANTING MOTION TO STAY

On April 21, 2000, BellSouth Telecommunications, Inc. (BellSouth) filed a complaint against Thrifty Call, Inc. (Thrifty Call). BellSouth alleges that Thrifty Call is intentionally and unlawfully reporting erroneous Percent Interstate Usage (PIU) factors to BellSouth in violation of BellSouth's Intrastate Access Tariff and the rules and regulations established by this Commission. BellSouth alleges that erroneous PIUs have resulted in the under-reporting of intrastate access terminating minutes to BellSouth, causing BellSouth financial harm. BellSouth has requested that we take all action appropriate to protect the company from further financial harm.

On May 16, 2000, Thrifty Call timely filed a Motion to Dismiss or, in the Alternative, to Stay BellSouth's complaint. On May 30, 2000, BellSouth timely filed a Response and Opposition to Thrifty Call's Motion to Dismiss or Stay.

On June 26, 2000, BellSouth filed a Motion for Leave to File Supplemental Authority in support of its opposition to Thrifty Call's motion to dismiss or stay. On July 10, 2000, Thrifty Call filed its Response and Opposition to BellSouth's Motion for Leave to File Supplemental Authority. On August 31, 2000, we issued Order No. PSC-00-1568-PCO-TP, denying Thrifty Call's Motion to Dismiss.

On July 11, 2001, the parties and our staff met in an issue identification conference, and the issues relevant to this proceeding were established.

On August 20, 2001, Thrifty Call filed a Motion to Stay or in the Alternative to Bifurcate the Proceedings. Thrifty Call first requests that the proceeding be stayed pending the outcome of its Petition for Declaratory Ruling to the Federal Communications Commission (FCC). There, Thrifty Call asks the FCC to clarify four points: 1) whether the jurisdictional report verification procedures and protections contained in BellSouth's Tariff F.C.C. No.1, Sections 2.3.10(B) to 2.3.10(D), are binding on BellSouth, and what procedures and remedies apply if BellSouth wishes to formally contest a submitting interexchange carrier's (IXC) percentage interstate usage; 2) that BellSouth must abide by its FCC tariff regarding mandatory audits and the utilization of a revised PIU; 3) that discrepancies between the reported and audited PIU shall be resolved based upon the terms of the FCC tariff; and 4) that traffic is appropriately classified as intrastate or interstate based upon the FCC's entry/exit surrogate (EES) method referenced in BellSouth's FCC tariff.

Thrifty Call asserts that this proceeding has one central issue: What is the appropriate PIU to be applied to the traffic that Thrifty Call terminated to BellSouth? Thrifty Call's position is that the FCC is the entity charged with determining what constitutes interstate usage, and its determination is binding upon us in our application of the PIU at issue in this case. Thrifty Call believes that under well established law, BellSouth must act pursuant to its tariff, and any ambiguity should be construed against BellSouth. Both BellSouth's FCC tariff and its Florida Access Services Tariff dictate that the total percent interstate usage and the concomitant percent intrastate usage must sum to 100 percent. Therefore, argues Thrifty Call, a determination of the interstate switched access usage by the FCC will automatically establish the amount of intrastate usage.

Thrifty Call also claims that the FCC's interpretation of the interstate tariff regarding the appropriate PIU audit and backbilling provisions will be dispositive of the legal issues in this case. Thrifty Call further believes that waiting on the FCC's ruling will obviate the possibility of conflicting state and federal rulings, and will conserve Commission resources.

As an alternative to the stay, Thrifty Call seeks bifurcation of the legal and factual issues of the case, with the legal issues being heard first. Five issues have been identified in this case:

Issue 1. What is the Florida PSC's jurisdiction in this matter?

Issue 2. What are the terms and conditions of tariff associated with correcting and backbilling misreported PIU?

Issue 3. Has BellSouth complied with its tariff provisions?

Issue 4. Has Thrifty Call misreported its PIU to BellSouth?

Issue 5. If Thrifty Call has misreported its PIU to BellSouth, what amount, if any, does Thrifty Call owe BellSouth?

The first two issues are legal issues. Thrifty Call believes that the answers to these issues form the framework for answers to the remaining issues, or decide whether they remain issues in this proceeding at all. As such, Thrifty Call argues that bifurcation offers judicial economy, a reduction in the time imposition on the parties, and enhances the prospect of settlement between the parties.

On September 4, 2001, BellSouth filed its Opposition to Thrifty Call's Motion to Stay or, in the Alternative, to Bifurcate the Proceedings. BellSouth asserts that the fundamental error in Thrifty Call's motion is that Thrifty Call believes the issues in this case are governed by BellSouth's federal tariff, rather than BellSouth's intrastate tariff. BellSouth contends that the issue has been addressed previously by the FCC in In the Matter of LDDS Communications, Inc. v. United Telephone of Florida, 15 FCC Rcd 4950, 2000 WL 253661 (F.C.C.) (rel. March 8, 2000). There, the FCC ruled:

Where the fundamental issue raised in the PIU dispute was the proper payment of intrastate access charges . . . the relationship between interstate and intrastate minutes of use does not subject to federal law, and the terms of the interstate tariff, all changes in a carrier's minutes of intrastate use. Rather, the traffic measurements process identifies the jurisdiction to which an IXC's traffic is assigned. Once that assignment has been accomplished, it is the appropriate tariff, as construed and applied by the proper regulatory authority, that governs the process for charging for minutes of use. In light of this regulatory structure, LDDS's complaint is properly viewed as challenging the two separate calculations - performed under two different tariffs - that resulted in United's retroactive adjustment of the access charge liability. The first transaction is the reduction of the carriers' interstate access-charge liability. To the extent that LDDS challenges this transaction, it challenges an access-charge calculation made under a tariff filed with the FCC and over which the Commission certainly has jurisdiction. On the other hand, the second transaction is plainly outside of the Commission's jurisdiction. In calculating the new intrastate access charges, United applied the terms of its intrastate tariff to the revised figure for intrastate minutes of use. Under the Act's dual-track system, this transaction falls squarely within the, jurisdiction of the Florida PSC; as such, it is beyond the jurisdiction of the Commission.

Id. at ¶¶ 10-12.

BellSouth argues that from a jurisdictional perspective, its dispute with Thrifty Call is indistinguishable from the LDDS-United dispute. BellSouth believes the dispute is governed solely by its Florida tariff, and therefore, there is no legitimate reason for the progress of this case to be delayed.

In addressing Thrifty Call's request for bifurcation, BellSouth points out that nearly every case addressed by us

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raises both legal and factual issues. BellSouth believes that Thrifty Call seeks to delay the resolution of this case for as long as possible, by addressing a few issues at a time. BellSouth argues that if Thrifty Call believes that the Commission has no jurisdiction over this matter, the proper avenue for addressing that claim is a motion to dismiss.

Decision

Thrifty Call's argument in support of a stay of this proceeding rests on its submission of a Petition for Declaratory Ruling to the FCC, and its assertion that the answers to questions raised there are essential to the advancement of this proceeding.

The fundamental issue in this case, as it was in LDDS, is the determination of the appropriate intrastate access charges. The outflow of this determination does not automatically wed intrastate usage to an interstate tariff. Here, BellSouth seeks to challenge the PIU because it leads to the possible under-reporting of intrastate terminating access minutes terminated to BellSouth. Jurisdictional report verification procedures and protections as raised by Thrifty Call and contained in BellSouth's Tariff FCC No. 1, Sections 2.3.10(B) to 2.3.10(D), and which specify procedures and remedies available, are instructive where the challenge's primary focus is interstate usage. They are not instructive where the primary focus is intrastate usage. As such, the provisions of BellSouth's FCC tariff outlined above are not pertinent to the issue at hand.

The second question raised is similarly answered. Where the challenge is directed to the reporting of interstate access minutes, the applicable provisions of the federal tariff regarding audit procedures and the utilization of a revised PIU ultimately hold sway. There is, however, no need to wait for an FCC determination of this issue where it is the intrastate access minutes which are in question.

Such is also the case with the third question brought before the FCC by Thrifty Call. Discrepancies between the reported PIU (interstate) and the audited PIU, are properly resolved by looking at the provisions of BellSouth's federal tariff. Where the subject of the discrepancy being questioned is intrastate usage, it is entirely appropriate to look to the provisions of BellSouth's Florida tariff for the resolution of discrepancies in reported usage and an audited PIU(intrastate).

As for the fourth question regarding the appropriate application of the Commission's EES methodology to calls originated by third party IXCs, this question serves to classify and define interstate or intrastate traffic. The answer to this question goes directly to the crux of the matter before this Commission. As noted by the FCC in LDDS, "...the traffic measurements process identifies the jurisdiction to which an IXC's traffic is assigned. Once that assignment has been accomplished, it is the appropriate tariff, as construed and applied by the proper regulatory authority, that governs the process for charging for minutes used." Id. at 4955 (emphasis added). The assignment of that measurement is within the purview of the FCC, and is also the basis used by BellSouth within its Florida Tariff for ultimately determining the appropriate PIU(intrastate). Section E2.3.14 A.1. of the Florida Tariff states that the I.C. and/or End User shall compute the PIU using the following formula (rounded to a whole percentage):

$$\frac{\text{Total Interstate Originating Minutes} + \text{Total Interstate Terminating Minutes}}{\text{Total Originating Minutes} + \text{Total Terminating Minutes}}$$

Section E2.3.14. A.1.a. further states that the intrastate usage is to be developed as though every call that originates within the same state as that in which the called station(as designated by the called station number) is situated is an intrastate communication, and every call for which the point of origination is in a state other than that where the called station (as designated by the called number) is situated is an interstate communication.

BellSouth's Florida Tariff, at Section E2.3.14 A.1.b., further requires that when the IC and/or End User computes the PIU, it shall subtract the developed percentage from 100 and the difference is the percent intrastate usage. The sum of the

interstate and intrastate percentages shall equal 100 percent.
Section E2.3.14. A.1.b. (emphasis added)

BellSouth's tariff uses the interstate minutes as the basis for computing the intrastate usage. By requiring the sum of the percentages of interstate and intrastate minutes to equal 100, its position is that anything that is not interstate, is intrastate. Therefore, fundamental to the application of the equation is the correct interpretation of interstate minutes and whether BellSouth's interpretation of interstate usage in its tariff comports with the FCC's Memorandum Opinion and Order, 57 Rad. Reg. 2d (P&F) 1573. recon. denied, Memorandum Opinion and Order on Reconsideration, 59 Rad. Reg. 2d (P&F) 631 (1985). There, the FCC delineated the appropriate method of jurisdictional separations for certain access traffic, and BellSouth's federal tariff calls for the use of this method of jurisdictional separations for the access services purchased by Thrifty Call. Within the intrastate tariff, there is also a clear difference in the interpretation of the terms "originates", and "point of origination", between the parties. BellSouth views the terms as relating to the retail customer, while Thrifty Call interprets them as the point traffic enters Thrifty Call's network. The FCC's determination on the above issue could be persuasive in our application of the intrastate tariff.

As such, I find it appropriate and in the interest of judicial economy, to stay this proceeding until the FCC issues a ruling on question number four of the Petition for Declaratory Ruling submitted by Thrifty Call.

Given the above determination, it is not necessary to address Thrifty Call's request for bifurcation. I will, however, offer some clarifying guidance for the progression of this proceeding. As noted in Order No. PSC-00-1568-PCO-TP, Commission staff may conduct an audit in this proceeding. That audit has commenced, and will not be affected by the ruling on the Motion to Stay. I emphasize that our staff's discretion as to the time period it seeks to review under its own audit is not limited by the tariff. However, the proper recovery period

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based on the tariff will be determined by this Commission in our ultimate resolution of Issue 5 in this proceeding.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Thrifty Call Inc.'s Motion to Stay or in the Alternative to Bifurcate, is granted as set forth in the body of this Order. It is further

ORDERED that the staff audit commenced in relation to this proceeding will not be affected by this ruling. It is further

ORDERED that this docket shall remain open.

By ORDER of Chairman E. Leon Jacobs, Jr. as Prehearing Officer, this 21st Day of November, 2001.

/s/ E. Leon Jacobs, Jr._____
E. LEON JACOBS, JR.
Chairman and Prehearing Officer

This is a facsimile copy. Go to the Commission's Web site, <http://www.floridapsc.com> or fax a request to 1-850-413-7118, for a copy of the order with signature.

(S E A L)

WDK

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an

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administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request:

- (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer;
- (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3)

judicial review by the Florida Supreme Court, in the case of an electric,

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gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.